

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE S.V.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI
THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944
ITA NO. 68 OF 2017
AGAINST THE ORDER IN ITA 340/COCH/2016 OF I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
KOTTAYAM.

BY ADV SRI.JOSE JOSEPH, SC, FOR INCOME TAX,

RESPONDENT:

M/S. SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD
1ST FLOOR, AMAL JYOTHI BUILDING, CATHEDRAL ROAD,
KANJIRAPPALLY, KOTTAYAM - 686 507.

BY ADVS.
SRI.A.KUMAR
SMT.G.MINI

OTHER PRESENT:

ADV NAVNEETH N NATH

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 10.11.2022,
ALONG WITH ITA.196/2019, 63/2019 AND CONNECTED CASES, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE S.V.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI
THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944
ITA NO. 196 OF 2019

AGAINST THE ORDER IN ITA 153/COCH/2018 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
KOTTAYAM.

BY ADVS.
P.K.RAVINDRANATHA MENON (SR.)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX,
ADV. NAVNEETH N. NATH

RESPONDENT:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.
KANJIRAPPALLY, KOTTAYAM-687 507.

BY ADVS.
SRI.A.KUMAR
SRI.P.J.ANILKUMAR
SMTG.MINI(1748)
SRI.P.S.SREE PRASAD
SRI.AJAY V.ANAND

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 10.11.2022,
ALONG WITH ITA.68/2017 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE S.V.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI
THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944
ITA NO. 63 OF 2019
AGAINST THE ORDER IN ITA 152/COCH/2018 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

BY ADVS.
P.K.RAVINDRANATHA MENON (SR.)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX,
ADV. NAVNEETH N. NATH

RESPONDENT:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.,
KANJIRAPPALLY, KOTTAYAM.

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 10.11.2022,
ALONG WITH ITA.68/2017 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE S.V.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI
THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944
ITA NO. 1 OF 2018

AGAINST THE ORDER IN ITA 340/COCH/2016 OF I.T.A.TRIBUNAL,COCHIN BENCH

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX, KOTTAYAM

BY ADV SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCEITY LIMITED
IST FLOOR, AMAL JYOTHI BUILDING, CATHEDRAL ROAD,
KANJIRAPPALLY, KOTTAYAM.

BY ADVS.
SRI.A.KUMAR
SMT.G.MINI

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 10.11.2022,
ALONG WITH ITA.68/2017 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE S.V.BHATTI
&
THE HONOURABLE MR.JUSTICE BASANT BALAJI
THURSDAY, THE 10TH DAY OF NOVEMBER 2022 / 19TH KARTHIKA, 1944
ITA NO. 219 OF 2019

AGAINST THE ORDER IN ITA 433/COCH/2018 OF I.T.A.TRIBUNAL, COCHIN BENCH

APPELLANT:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
KOTTAYAM.

BY ADV SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT:

M/S. SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.
KANJIRAPPALLY, KOTTAYAM

BY ADVS.
SRI.A.KUMAR
SMT.G.MINI(1748)

THIS INCOME TAX APPEAL HAVING COME UP FOR ADMISSION ON 10.11.2022,
ALONG WITH ITA.68/2017 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

[ITA Nos.68/2017, 196/2019, 63/2019, 1/2018, 219/2019]

S.V.Bhatti, J.

We have heard Mr Navneeth N. Nath holding for Mr Jose Joseph for the appellant and Mr A Kumar for the respondent.

2. The Principal Commissioner of Income Tax, Kottayam/Revenue, is the appellant. M/s. Sahyadri Co-operative Credit Society Ltd, Kottayam/assessee, is the respondent.

3. The details of the orders impugned in the appeals from each assessment year and appeals before the First Appellate Authority and the Tribunal are furnished hereunder:

Sl.No.	Assessment year and date of assessment order	Order of the Deputy Commissioner of Income Tax (Appeals)	Order of the Tribunal	ITA
1	2012-13; 11.03.2015	ITA No.K-08/CIT(A)/KTM/2015-16/172 dated 31.05.2016	ITA No.340/Coch/2016 DATED 26.05.2017	68/2017

2	2012-13; 11.03.2015	ITA No.K- 8/CIT(A)/KTM/2015- 16/172 dated 31.05.2016	ITA No.340/Coch/2 016 dated 26.05.2017	01/2018
3	2013-14; 29.03.2016	Order dated 31.01.2018	ITA No.152/Coch/2 018 dated 29.08.2018	63/2019
4	2014-15; 23.12.2016	Order dated 31.01.2018	ITA No.153/Coch/2 018 dated 29.08.2018	196/2019
5	2015-16; 08.12.2017	Order dated 09.07.2018	ITA No.433/Coch/2 018 dated 17.01.2019	219/2019

The questions for consideration are identical. Therefore, the appeals are disposed of by this common judgment. ITA No.68/2017 has been treated as the lead case by the counsel appearing for the parties.

ITA 68/2017

4. The assessee is a multi-state Co-operative Society registered under Section 7 of the Multi-State Co-operative Societies Act, 2002 (for short, 'MSCS Act'). The assessee extended its operation to the States of Kerala and Tamil Nadu. The assessee, on 20.09.2012, filed the return of income for the assessment year 2012-13. The assessee claimed a deduction under Section 80P of the Income Tax Act, 1961 (for short, 'the Act') of Rs. 1,42,23,305/- and

return of income at Rs.1,62,080/-.

5. The Assessing Officer first disallowed the deduction claimed under Section 80P of the Act. Further, the Assessing Officer concludes that the assessee earned income from interest on deposits from members and deposits made in scheduled Banks from trading commodities and interest from call money depositors. In view of the view taken by the Assessing Officer, the said income has been treated as income from other sources (vide order dated 11.03.2015).

6. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) (for short, 'CIT (Appeals)'), and the First Appellate Authority accepted the claim of deduction made by the assessee under Section 80P of the Act. The Revenue filed an appeal before the Income Tax Appellate Tribunal (for short, 'the Tribunal'). The Tribunal, through the order impugned in the appeal, dismissed the appeal filed by the Revenue and the Cross-Appeal filed by the assessee. The effect of the order of the Tribunal is that the Tribunal confirmed the finding of the CIT (Appeals) and the applicability of Section 80P(2) to the assessee- Society, and a few deductions claimed

on the interest income are also accepted.

7. To meet the statutory obligation under Banking Regulation Act, 1949 or RBI regulations, the assessee is maintaining the interest deposits, and the income earned from such interest deposits is also exempted. It is also entitled to deductions under Section 80P of the Act. Hence, the appeals by raising the following substantial questions of law.

“1. a) Whether, on the facts and in the circumstances of the case and assessee being a multistate co-operative Society governed by the Multi State Cooperative Societies Act, 2002, the assessee is entitled to be considered under Sec. 80P of the Income Tax Act?

b)Whether, on the facts and in the circumstances of the case and in the absence of providing agricultural credits to its members and providing only general credit facility, the assessee is entitled to the benefit of section 80P of the Income tax Act?

c) In view of the distinction in the definition of primary agricultural credit society obtained under the state co-operative Societies Act and the Banking Regulation Act, the tribunal is right in law in not confining to the definition in the Banking Regulation Act with which alone section 80P of the IT Act is concerned?

2. Whether on the facts and circumstances of the case and in law, Tribunal is justified in holding that the interest from surplus fund is "Income from business" and not as "Income from other sources"?”

8. Adv. A Kumar raises the preliminary objections on the maintainability and continuation of the appeal by the Revenue. He relies on Circular No.3/2018, read with an amendment dated 20.08.2018 and argues that the monetary limit supported by the Circular is attracted to the appeal and the appeals are to be dismissed.

9. Adv. Navneeth N. Nath refers to the following judgments in ITA No.211/2019:

(1) Commissioner of Income Tax v. Surya Herbal Ltd.

“Liberty is given to the Department to move the High Court pointing out that the Circular dated February 9, 2011, should not be applied ipso facto, particularly, when the matter has a cascading effect. There are cases under the Income-tax Act, 1961, in which a common principle may be involved in subsequent group of matters or a large number of matters. In our view, in such cases if attention of the High Court is drawn, the High Court will not apply the Circular ipso facto. For that purpose, liberty is granted to the Department to move the High Court in two weeks. The special leave petition is, accordingly, disposed of.

(2) Commissioner of Income Tax v. Tarun R. Tahliani

“In these appeals, the tax effect is less than Rs. 1 Crore and are covered by Circular No. 3/2018 dated 11.07.2018 of the Central Board of Direct Taxes. These appeals are, accordingly, dismissed. However, it shall be open to the Income-Tax Department to seek review in any of these matters, if it is pointed out that the tax effect is more than

Rs. 1 Crore. Pending applications, if any, stand disposed of.

(3) S.C. Naregal v. Commissioner of Income Tax

“Similar question came up for consideration before this court in DIT v. S.R. M. B. Dairy Farming (P.) Ltd. reported in [2018] 13 SCC 239¹. This court after considering the decisions of different High Courts, including the Supreme Court decision on the question involved, namely, CIT v. Surya Herbal Ltd. reported in [2011] 15 SCC 4822 answered the question in favour of the assessee in the following words: "We are of the view that the matter needs to be put to rest and a clarity be obtained in view of the impact of this issue on pending cases before the High Courts as well as the cases which have been disposed of by various High Courts by applying the circular of 2011 to pending litigations. In our view the been squarely put to rest taking further care of the interest of the Revenue by the order passed by the three-judges Bench of this court in Surya Herbal Ltd. case, which had put two caveats even to the retrospective application of the circular. The subsequent orders have been passed by the two judges Bench without those orders being brought to the notice of the court, a duty which was cast on the Department to have done so to avoid the ambiguity which has arisen. Thus, the said view of the three-judges Bench would hold water and the circular would apply even to pending matters but subject to the two caveats provided in Surya Herbal Ltd. case."

The same interpretation must apply to the instructions under consideration. In the present case, there is no possibility of cascading effect nor the issue is involved in group of matters, as such. Therefore, the appeals are allowed.”

He argues that the principal question for consideration in these cases is the status and standing of the assessee under the MSCS Act

and the applicability of Section 80P to a Society registered under the MSCS Act. The question is perennial and arises in cases where an assessee takes registration under the MSCS Act. There is no direct judgment on the point, and therefore, the case on hand comes under one exception or the other stated by the Supreme Court in the citation relied on by him. Thus, the question and status of the assessee are decided. Once the status is decided, the assessee could be entitled only to such deductions or allowances to which the assessee is entitled under the Act.

9.1 To bring home his argument, he explains by an illustration that, given the operation of various Circulars issued by the CBDT in the subsequent years to the subject assessment year as well for one available reason or not, the assessee would continue to avail the benefit of Section 80P(2) of the Act. Assuming that the Commissioner accepts the view of the assessee both on the standing of the assessee and eligible deductions available on this behalf, in that particular year, if the monetary limit is less than One crore, the remedies of appeal before the Tribunal and in this Court are

precluded. Therefore, the principal issue is considered, and thereafter, the entitlement of deductions of interest earned from other deposits could be considered and decided as held by this Court in *Principal Commissioner of Income Tax (Appeals) v. Peroorkada Service Co-operative Bank Ltd*¹

10. We have considered the preliminary objection on the continuation of the appeal and the Revenue's reply. Upon due consideration of the extant Circulars issued by the CBDT on the monetary limit, we do not doubt that the exception stated by the Hon'ble Supreme Court in the reported judgments is not applicable, which would have been a straight case for following the Circulars and dismissing the appeal. We do not suppose such a course of action for due and valid reasons. The assessee is a body registered under MSCS Act, and the preponderance of the judicial opinion is more related to the Cooperative societies registered under the Kerala State Cooperative Societies Act, 1969. But as rightly pointed out by Mr Navneeth N. Nath, the status of the assessee has to be

¹ [2022] 442 ITR 141 (Ker.)

decided, and to the extent warranted, the first and foremost question on the standing of the assessee must be decided.

10.1 After perusing the Circulars issued on the filing and continuation of the appeals subject to the monetary limit stipulated in the respective circulars and the judgments of the Supreme Court on the point, we are of the view that the first and foremost question as either cascading effect or would arise on year to year basis. Therefore, we are convinced that the appeals at the instance of the Department can be continued. For the above reasons, the preliminary objection raised by Mr A Kumar is overruled.

11. Question No.1 (a)--“Whether, on the facts and in the circumstances of the case and assessee being a multistate co-operative Society governed by the Multi State Cooperative Societies Act, 2002, the assessee is entitled to be considered under Sec. 80P of the Income Tax Act?”

11.1 Mr Navneeth N. Nath argues that the income tax provisions must be construed strictly. Section 2(19) of the Act defines what a Co-operative Society means:

(19) “co-operative Society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies”;

Therefore, the assessee-Society is not a society registered 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. The assessee is registered under MSCS Act. The said society cannot be given the benefit from Section 80P of the Act. The Supreme Court in *Mavilayi Service Co-operative Bank Ltd v. Commissioner of Income Tax*² was considering either Primary Agricultural Co-operative Societies or Co-operative Societies registered under the Kerala Cooperative Society Act, 1969 but not a society registered under the MSCS Act. Even going by the principle laid down by the Supreme Court in *Mavilayi Service Co-operative Bank Ltd*, the assessee is not entitled to the benefit under Section 80P of the Act. It is stated there is no binding precedent on the question urged by the Revenue, and from a plain reading of Section 2(19) and 80P of the Act, the assessee is a society registered under MSCS Act, is beyond the scope of Section 80P. He prays for answering the

²

(2021) 431 ITR 1 (SC)

questions in favour of the Revenue and against the assessee. In such favourable consideration by this Court, other questions need not be considered. Alternatively, other questions, it is argued, are covered by the judgment of this Court in *Peroorkada Service Cooperative Bank Ltd* (Supra).

12. Mr A Kumar argues that the definition of 'Co-operative Society' has contemporaneous and contextual meaning. In the case on hand, the assessee is a Cooperative society registered under the MSCS Act. The nomenclature of the MSCS Act sets out that a society registered under this Act can operate in more than one State. In other words, the Co-operative society registered under the Kerala Co-operative Societies Act, 1969, can operate only within the territorial limit of the State of Kerala. Except for the said distinction, the assessee-Society is similar in establishment, registration, functioning, power of Authorities etc. To make a contemporaneous application of Section 2(19) to an Act made by the Parliament. He has stated a few similarities, and for convenience, we refer to the same in the following tabular column:

Sl. No.	Cooperative Societies registered under the State Act.	Multi-State Cooperative Societies
	Registered under the State Act. Section 7 deals with registration of Cooperative Societies.	Registered under the Multi State Cooperative Societies Act, 2002.Registration of MSCS is under Section 7 of the MSCS Act.
	Registered with the Registrar of Cooperative Societies within a particular State	Registered with the Central Registrar. Administrative and financial control of these societies is with the central registrar.
	Section 3 Registrar of Cooperative Societies is appointed by the State Government.	Under section 4 (1) The Central Government may appoint a person to be the Central Registrar of Co-operative Societies and may appoint such other persons as it may think fit to assist the Central Registrar.
	Objects confined to one State	Objects not confined to one State and extends to serving the interests of members in more than one State
	"Member" is defined u/s 2(1) "member" means a person joining in the application for the registration of a co-operative society or a person admitted to membership after such	"Member" is defined u/s 2(m) "member" means a person joining in the application for the registration of a multi-State cooperative society and includes a person admitted to membership. after such

	registration in accordance with this Act, the rules and the bye-laws, and includes a nominal or associate member.	registration in accordance with the provisions of this Act, the rules and the byelaws;
	Section 2(m): Nominal or associate member defined under; "nominal or associate member" means a member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in the bye-laws;	Section 26: deals with Nominal or associate member; A multi-State co-operative society may, if provided in its bye-laws, admit a person as nominal or associate member: Provided that no such nominal or associate member shall be entitled to subscribe the shares of such society or have any interest in the management thereof including right to vote, elect as a director of the board or participate in the general body meetings
	Section 16 deals with persons who may become members	Section 25 deals with persons who may become members
	Cooperative principle is defined under section 2(eccc)	Cooperative principle is defined under Section 3(g)

- Both - Co-operative societies registered under the State Act and Multi State Cooperative Societies registered under the Multi State Cooperative Societies Act work on the same cooperative principles and its Bye-laws are to provide for social and economic betterment of its members through self-help and mutual aid in accordance with the co-operative principles as specified in the Objects of the respective Acts.

- Administrative and financial control of these societies are with the Registrars appointed under the Act.
- The provisions relating to membership, "nominal and associate members are identical.
- Nominal and associate members are not eligible for any share in the assets and profits of the Society and have no voting rights.
- As per Sections 2(19) of the Income Tax Act Co-operative society means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any law for the time being in force in any State for the registration of co-operative societies.

Multi State Cooperative Societies Act applies to the whole of India and is an Act in force within the States as the Central Act.
- Section 22 provides for the conversion of a Cooperative Society into a Multi State Cooperative Society only condition being the member being from more than one State and registered with the Central Registrar who affords such registration after consulting with the Registrars of respective States.
- Under the banking regulation Act, a Co-operative Society is defined as a society registered or deem to have been registered under the Central Act for the time being in force relating to the Multi State Co-operative Societies or any other Central or State law relating to Co-operative Societies for the time being in force.”

12.1 The assessee-Society is also registered to serve the interest of members more than in one State. Even by inviting our attention to *Mavilayi Service Cooperative Society Ltd*, it is argued that one of the societies before the Supreme Court is society registered under the MSCS Act. This Court keeps in perspective the ratio laid

down by the Supreme Court in *Citizen Cooperative Society Limited v. Assistant Commissioner of Income Tax*³. The operative portion of the said judgment reads thus:

“5.1. The assessee was established on 31-5-1997 initially as a mutually aided cooperative credit society, having been registered, under Section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 with Registration No. AMC/RR/DCO/9714 by the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy. As operations of the assessee over the years had increased manifold and as its operations were spread over States of the erstwhile Andhra Pradesh, Maharashtra and Karnataka, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 in terms of the certificate dated 26-7-2005 issued by Office of Central Registrar of Cooperative Societies, Krishi Bhawan, New Delhi.

18. We may mention at the outset that there cannot be any dispute to the proposition that Section 80-P of the Act is a benevolent provision which is enacted by Parliament in order to encourage and promote growth of cooperative sector in the economic life of the country. It was done pursuant to the declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (see *Bajaj Tempo Ltd. v. CIT* [(1992) 3 SCC 78]). It is also trite that such a provision has to be construed as to effectuate the object of the legislature and not to defeat it (see *CIT v. Mahindra and Mahindra Ltd.* [(1983) 4 SCC 392]). Therefore, it hardly needs to be emphasised that all those cooperative societies which fall within the purview of Section 80-P of the Act are entitled to deduction in respect of any income referred to

in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to any one or more of such activities which are mentioned in sub-section (2).

Therefore, the definition is in the Income Tax Act from the inception of the Act, and the definition has to be contemporaneously applied to an Act made by the Parliament as the MSCS Act. The denial of Section 80P benefit to the Society and its members would again defeat the very purposes accepted by the Supreme Court for interpreting the word 'Primary Agricultural Co-operative Society', 'Societies registered under the Societies Registration Act, 1860' etc. In all fours, the definition of 'Co-operative Society' in Section 2(19) is attracted to the case on hand, and the assessee is entitled to the benefit of Section 80P of the Act.

13. We have taken note of the rival submissions. The subtle argument canvassed for the Revenue is to follow the interpretative principle applied in fiscal statutes viz. strict construction. It is said that the assessee is not a Society registered under both the Acts referred to in the definition. Therefore, the assessee cannot claim benefits under Section 80P of the Act. Before applying the said

argument in the case on hand, we need to bear in mind that the definition in Section 2(19) is in the statute book from 1961. The Parliament made the MSCS Act, as the table presented above clearly shows the distinguishing feature, if any, between a Society registered under the Kerala Cooperative Societies Act and MSCS Act is that in the former area of operation is limited to a place in the State or within the State or in the latter, the area of operation can be expanded to Multi-states. The restrictive application of the definition clause, mainly by keeping in view the reasoning and the conclusion, and the principle laid down in *Mavilayi Service Cooperative Society Ltd*, which we need not refer to because the counsel for the Revenue accepts that the Supreme Court has in para 21 held as follows:

“21. An analysis of this judgment would show that the question of law 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 Parliament enacted 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. and Ors. (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).”

13.1 All the attributes weighed with the Apex Court for interpreting Co-operative Societies etc., in *Mavilayi Service Cooperative Bank Ltd* are available and attracted to the case on hand. The MSCS Act is an Act of the Parliament, and restricting the deduction under Section 80P to an Act of parliament and extending it to the bodies coming into existence under an enactment of the

State could again defeat not only the contemporaneous definition applicable to Section 2(19) read with Section 80P of the Act.

14. For the above reasons, particularly by taking note of the dictum of the Supreme Court in *Mavilayi Service Cooperative Bank Ltd* and *Citizen Cooperative Society Ltd*, we are holding that the assessee is a Society registered under MSCS Act, comes within the definition of Section 2(19) of the Act, hence entitled to the benefit of Section 80P of the Act. The question is answered in favour of the assessee and against the Revenue.

15. The answer has been held in favour the assessee; we will now be called upon to answer questions nos.1.b and 1.c.

Questions nos.1.(b) and 1.(c)- b)Whether, on the facts and in the circumstances of the case and in the absence of providing agricultural credits to its members and providing only general credit facility, the assessee is entitled to the benefit of section 80P of the Income tax Act?

c) In view of the distinction in the definition of primary agricultural credit society obtained under the state co-operative Societies Act and the Banking Regulation Act, the tribunal is right in law in not confining to the definition in the Banking Regulation Act with which alone section 80P of the IT Act is concerned?

15.1. The counsel for the parties submit that the questions are squarely covered by the principles laid down by the Supreme Court

in *Mavilayi Service Cooperative Bank Ltd* and to the extent applicable to the case on hand, the questions are answered in favour of the Assessee and against the Revenue.

16. Question No.2: 2. Whether, on the facts and circumstances of the case and in law, Tribunal is justified in holding that the interest from surplus fund is "Income from business" and not as "Income from other sources"?"

16.1. It is argued that the assessee, after satisfying the test of being a Cooperative society and falling within the range of the *Mavilayi Service Cooperative Bank Ltd*, the assessee is entitled to the deduction strictly in terms of Section 80P(2). This Court had to consider the applicability of Section 80P(2) and 80P(4) of the Act in *Peroorkada Service Cooperative Bank Ltd*. Therefore, the findings in favour of the assessee on the interest income earned from other than named institutions and members will have to go back for reconsideration. Following *Peroorkada Service Cooperative Bank Ltd*, we have disposed of ITA No.205 of 2019 vide judgment dated 28.09.2022. By following the principle laid down in *Peroorkada Service Cooperative Bank Ltd*, the question is answered in favour of the Revenue and against the assessee for statistical purposes. The

matter is remitted to Assessing Officer for disposal afresh.

The questions are answered accordingly, and the appeal is disposed of as indicated above.

ITA Nos.196/2019, 63/2019, 1/2018, 219/2019

Following the reasoning and conclusion in the lead case, the questions raised in these appeals are answered accordingly.

Sd/-

S.V.BHATTI

JUDGE

Sd/-

BASANT BALAJI

JUDGE

JS

APPENDIX OF ITA 196/2019

PETITIONER ANNEXURES

ANNEXURE A	ASSESSMENT ORDER UNDER SECTION 143(3) DATED 23.12.2016.
ANNEXURE B	CIT (A)'S ORDER NO.ITA NO.K-21/CIT(A)/KTM/2016-17 DATED 31.01.2018.
ANNEXURE C	ITAT'S ORDER IN ITA NO.153/COCH/2018 DATED 29.08.2018.

APPENDIX OF ITA 63/2019

PETITIONER ANNEXURES

ANNEXURE A	ASSESSMENT ORDER U/S.143(3) DT.23/12/2016.
ANNEXURE B	CIT (A)'S ORDER NO.ITA NO.K-21/CIT (A)/KTM/2016-17 DATED 31/01/2018.
ANNEXURE C	ITAT'S ORDER IN ITA 152/COCH/2018 DATED 29/08/2018.

APPENDIX OF ITA 1/2018

PETITIONER ANNEXURES

Annexure A	ASSESSMENT ORDER U/S 143 (3) DT. 11.03.2015.
Annexure B	CIT (APPEALS) ORDER NO. ITA.K-08/KTM/CIT(A)/KTM/15-16/172 DT. 31/05/2016.
Annexure C	ITAT'S ORDER ITA NO.340 OF 2016 DATED 26.05.2017 CO. 26/COCH/16.

APPENDIX OF ITA 219/2019

PETITIONER ANNEXURES

ANNEXURE A	ASSESSMENT ORDER U/S 143(3) DT. 08/12/2017
ANNEXURE B	CIT (A)'S ORDER NO. ITA NO.K24/CIT(A) /KTM/2017-18 DT 09/07/2018
ANNEXURE C	ITAT'S ORDER IN ITA NO. 433/COCH/2018 DT. 17/01/2019

APPENDIX OF ITA 68/2017

PETITIONER ANNEXURES

ANNEXURE-A	ASSESSMENT ORDER U/S.143(3) DT.11.03.2015
ANNEXURE B	CIT (APPEALS) ORDER NO.ITA.K-08/KTM/CIT(A)/KTM/15-16/172 DT.31.05.2016.
ANNEXURE C	ITAT'S ORDER ITA NO.340 OF 2016 DATED 26.05.2017.