

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. No. 297/Coch/2015
Assessment Year : 2010-11

Narikunni Service Co-operative Bank, No. L L 143, P.O. Narikunni, Kozhikode-673 585. [PAN:AAAAN 7161Q]	Vs.	The Income Tax Officer, Ward-2(3), Kozhikode.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	None
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	05/06/2017
Date of pronouncement	06/06/2017

ORDER

Per ABRAHAM P.GEORGE, ACCOUNTANT MEMBER:

This is a matter remitted back to the Tribunal by Hon'ble Jurisdictional High Court through a judgment dated 12th August, 2016 in I.T.A. No.89/2016. Operative part of the judgment of the Hon'ble Jurisdictional High Court is reproduced hereunder:

*"2. On hearing both sides, we find that the issues raised are entirely covered by the judgment of this Court in **Chirakkal Service Co-***

operative Bank Limited v. Commissioner of Income Tax [2016 (2) KLT 535].

3. The question of law framed stands answered in terms of the judgment mentioned above and the matter will stand remitted to the Appellate Tribunal."

2. When the matter was taken up today, pursuant to the directions of the Hon'ble Jurisdictional High Court, nobody appeared on behalf of the assessee. One of the reasons assessee was denied deduction claimed by it u/s. 80P(2)(i)(a) of the Income Tax Act, 1961 (in short 'the Act') was that it had filed its return of income for the impugned assessment year beyond the time limits specified in Section 139(4) of the Act. As per the Assessing Officer, by virtue of Section 80P(5) of the Act, deduction under Chapter VIA could not be given where the return of income was filed beyond time allowed u/s. 139(4) of the Act. Second reason for denying the claim was that, as per the Assessing Officer, assessee could only be considered as a Co-operative Bank and thus hit by Section 80P(4) of the Act. CIT(A), on assessee's appeal had upheld the view of the Assessing Officer. Further appeal filed by the assessee before this Tribunal also did not have any success.

3. Now Hon'ble Jurisdictional High Court has remitted the case back to usl for considering the issues afresh based on the judgment of the Hon'ble High Court of Kerala, in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT (384 ITR 490)..

4. Ld. DR, strongly supporting the orders of the authorities below, submitted that assessee had advanced loans to its members for short term non agricultural purpose and such loans came to 55.35% of the total advances. According to him, deduction u/s. 80P(2)(i)(a) could not be allowed and even if allowed it had to be restricted to the profits on loans given by the assessee for the agricultural related activities.

5. We have heard the contentions of the Ld. DR. Assessee was denied the deduction claimed by it for the reason that the return was filed belatedly and treating it as a Co-operative Bank. In so far as belated filing of return is concerned, we find that the issue stands squarely covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Co-operative Bank Ltd. vs. CIT (supra). Paras 18 to 21 of the judgment are reproduced hereunder:

"18. Questions B and C relate to denial of exemption on ground referable to belated filing of return, that is to say, returns filed beyond the period stipulated u/s. 139(1) or section 139(4), as the case may be, as well as section 142(1) or section 148, as the case may be. There are no cases among these appeals where returns were not filed. There are cases where claims have been made along with the returns and the returns were filed within time. Still further, there are cases where returns were filed belatedly, that is to say, beyond the period stipulated under subsection 1 or 4 of section 139; and, there are also returns filed after the period with reference to sections 142(1) and 148 of the I.T. Act.

19. Section 80A(5) provides that where the assessee fails to make a claim in his return of income for any deduction, inter alia, under any provision of Chapter VIA under the heading "C-Deductions in respect of certain incomes", no deduction shall be allowed to him thereunder. Therefore, in cases where no returns have been filed for a particular assessment year, no deductions shall be allowed. This embargo in section 80A(5) would apply, though section 80P is not included in section 80AC. This is so because, the inhibition against allowing deduction is worded in quite similar terms in sections 80A(5) and 80AC, of which section 80A(5), is a provision inserted through the Finance Act 33/2009 with effect from 1.4.2013 after the insertion of section 80AC as per the Finance Act, 2006 with effect from 1.4.2006. This clearly evidences the legislative intendiment that the inhibition contained in subsection 5 of section 80A would operate by itself. In cases where returns have been filed, the question of exemptions or deductions referable to section 80P would definitely have to be considered and granted if eligible.

20. Here, questions would arise as to whether belated returns filed beyond the period stipulated u/s. 139(1) or section 139(4) as well as following sections 142(1) and 148 proceedings could be considered for exemption. If those returns are eligible to be accepted in terms of law, going by the provisions of the statute and the governing binding precedents, it goes without saying that the claim of exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration.

21. When a notice u/s. 142(1) is issued, the person may furnish the return and while doing so, could also make claim for deduction referable to section 80P. Not much different is the situation when pre-assessment enquiry is carried forward by issuance of notice under section 142(1) or when notice is issued on the premise of escaped assessment referable to section 148 of the IT Act. This position notwithstanding, when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. Under such circumstances, the Tribunal was not justified in denying exemption u/s. 80P of the IT Act on the mere ground of belated filing of return by the assessee concerned. A return filed by the assessee beyond the period stipulated u/s. 139(1) or 139(4) or u/s. 142(1) or section 148 can also be accepted and acted upon provided further proceedings in relation to such assessments are pending in the statutory hierarchy of adjudication in terms of the provisions of the IT Act. In all such situations, it cannot be treated as non est in law and invalid for the purpose of deciding exemption u/s. 80P of the IT Act. We thus answer substantial questions of law B and C formulated and enumerated above."

6. The other question that remains is whether assessee could be considered as Co-operative Bank, thereby coming within the restrictive subsection (4) of Section 80P. There is nothing on record to show whether assessee was recognised as a Co-operative Bank within the meaning of section 5(cciv) of Banking Regulations Act by the Reserve Bank of India. Categorisation of the assessee in the certificate issued to the assessee by the competent authority under Kerala Co-operative Societies Act, 1969 is also not on record. We are, therefore, of the

opinion that the issue relating to the status of the assessee requires a fresh look by the Assessing Officer. Therefore, while holding that assessee could not be denied its claim of deduction u/s. 80P for a reason that it filed its return belatedly, we remit the matter back to the Assessing Officer to verify whether assessee was a Co-operative Bank falling within the meaning of section 80P(4) of the Act, after considering the law laid down in this regard by Hon'ble Jurisdictional High Court and records in support of its claim produced by the assessee. Assessee is directed to cooperate with the Assessing Officer. Orders of lower authorities are set aside to this extent.

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

Pronounced in the open court on 06-06-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Place: Kochi
Dated: 06th June, 2017
GJ

Copy to:

1. Narikunni Service Co-operative Bank, No. L L 143, P.O. Narikunni, Kozhikode-673 585.
2. The Income Tax Officer, Ward-2(3), Calicut.
3. The Commissioner of Income-tax(Appeals), Kozhikode.
4. The Commissioner of Income-tax, Kozhikode.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin