

IN THE INCOME TAX APPELLATE TRIBUNAL : COCHIN
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE. K. JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. Nos.135 & 720/Coch/2013
निर्धारण वर्ष /Assessment years : 2009-10 & 2010-2011.

The Nileshwar Service Co-
Operative Bank Ltd,
Nileshwar,
Kasaragod 671 314.

Vs. The Income Tax Officer,
Ward -2,
Kasargod.

[**PAN AAAAT 3163C**]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. Mathew Joseph, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Dhanraj, SR. AR.

सुनवाई की तारीख/Date of Hearing : 13-03-2017
घोषणा की तारीख /Date of pronouncement : 14-03-2017

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Both these appeals were remitted back to this Tribunal by Hon'ble Jurisdictional High Court through its judgment dated 16th February, 2016 in ITA Nos.85/2015 and 14/2014.

2. Assessee in its returns filed for the impugned assessment years had claimed deduction u/s.80P(2)(a) (i) of the Income Tax Act, 1961 (in short 'the Act') in respect of their income from banking. Claim of the assessee was that it was only a primary agricultural credit

society and such income was earned by it were from credit facilities provided to its members. However, Id. AO had denied the claim of the assessee's, relying on sub section (4) of Sec. 80P of the Act. As per Id. Assessing Officer assessee could only be considered as a co-operative bank and hence was not eligible for such claim. Id. Assessing Officer also restricted the claim made by the assessee's for provision made on bad debts relying on section 36(1)(viiia) of the Act, observing that maximum deduction available had to be restricted to 7.5% of gross total income and 10% of aggregate average advance made by rural branches. Assessee's appeal before Id. Commissioner of Income Tax (Appeals) did not meet with any success. This persuaded assessee's to move this Tribunal. This Tribunal vide its order dated 31st July, 2014 confirmed the orders of the lower authorities. Thereupon assessee's moved in further appeal before Hon'ble Jurisdictional High Court and Hon'ble Jurisdictional High Court through its judgment dated 15.04.2016 following its own judgment in the case of *Chirakkal Service Co-operative Bank Ltd vs. CIT 384 ITR 490* held that the assessee was not hit by sub section (4) of Sec. 80P of the Act, since it was classified as a primary agricultural credit society by the competent authority under the State Law relating to Co-operative Societies. What was held by the Hon'ble Lordship in the case

of *Chirakkal Service Co-operative Bank Ltd (supra)* at paragraphs 9 to 16 is apposite and this is reproduced hereunder:-

'9. Section 80P of the Income-tax Act deals with deduction in respect of income of co-operative societies. Sub-section (1) of that section provides that where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2) of that section, there shall be deducted, in accordance with and subject to the provisions of section 80P, the sums specified in sub-section (2) thereof, in computing the total income of the assessee. Sub-section (4) of section 80P provides that the provisions of section 80P shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. This provision in sub-section (4) of section 80P means that the provisions of section 80P shall not apply to a primary agricultural credit society. Hence, the levy of tax in terms of the provisions of section 80P does not apply to a primary agricultural credit society.

10. The terms "co-operative bank" and "primary agricultural credit society" for the purpose of sub-section (4) of section 80P of the Income-tax Act, shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 ; for short ; BR Act, going by Explanation (a) occurring after section 80P(4) of the Income-tax Act. For the purpose of that sub-section, "primary co-operative agricultural and rural development bank" is defined to mean what is stated in Explanation (b) to section 80P(4) of the Income-tax Act.

11. Part V of the Banking Regulation Act carries section 56 of that Act, which prescribes modifications to the provisions of the Banking Regulation Act in their application and in relation to co-operative societies.

12. "Co-operative bank" is a term defined in section 5(cci) of the Banking Regulation Act to mean, inter alia, a primary co-operative bank. A primary co-operative bank is a co-operative society other than a primary agricultural credit society, going by clause (ccv) of section 5 of the Banking Regulation Act. Therefore, a primary agricultural credit society is not to be treated as a primary co-operative bank and therefore, not to be reckoned as a co-operative bank. We state this here and now to point out that the appellants which are primary agricultural credit

societies are not of such type that they would fall for consideration as a co-operative bank for the purpose of sub-section (4) of section 80P of the Income-tax Act. Resultantly, the consequential legal implication is that a primary agricultural credit society is one among the two types of institutions which gain the benefit of sub-section (4) of section 80P to ease themselves out from the coverage of section 80P. The argument advanced on behalf of the Revenue, to the contrary is repelled."

13. Reverting to section 5(cciv) of the Banking Regulation Act ; "primary agricultural credit society" means a co-operative society, the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities including the marketing of crops ; and the bye-laws of which do not permit admission of any other co-operative society as member. However, the provisions in sub-clause (2) of section 5(cciv) shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose. This is the effect of the proviso occurring after sub-clause (2) of section 5(cciv) which is referred to herein only for continuity, though we are not really concerned with the effect of that proviso. Keeping in mind that "primary agricultural credit society" is defined with reference to the term "co-operative society" ; reverting to section 5(cciia) of the Banking Regulation Act, it can be seen that for the purpose of that Act, "co-operative society" means a society registered or deemed to have been registered under any 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.

14. In all the clauses referred to above, the legislative tool used is "means" ; and not "includes". Therefore, when the term "co-operative society" is defined to mean, inter alia, a society registered under any State law relating to co-operative societies for the time being in force ; one such is a co-operative society for the purposes of the Banking Regulation Act and if that co-operative society satisfies the definition of "primary agricultural credit society", it would be one to which the exemption as per sub-section (4) of section 80P of the Income-tax Act would apply.

15. Appellants in these different appeals are indisputably societies registered under the Kerala Co-operative Societies Act, 1969, for short, KCS Act and the bye-laws of each of them, as made available to this court as part of the paper books, clearly show that they have been classified as primary agricultural credit societies by the competent authority under the provisions of that Act. Parliament, having defined the term "co-operative society" for the purposes of the Banking Regulation Act with reference to, among other things, the registration of a society under any State law relating to co-operative societies for the time being ; it cannot but be taken that the purpose of the societies so registered under the State law and its objects have to be understood as those which have been approved by the competent authority under such State law. This, we visualise as due reciprocative legislative exercise by Parliament recognising the predominance of decisions rendered under the relevant State law. In this view of the matter, all the appellants having been classified as primary agricultural credit societies by the competent authority under the Kerala Co-operative Societies Act, it has necessarily to be held that the principal object of such societies is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances to be at the rate fixed by the Registrar of Co-operative Societies under the Kerala Co-operative Societies Act and having its area of operation confined to a village, panchayat or a municipality. This is the consequence of the definition clause in section 2(oaa) of the Kerala Co-operative Societies Act. The authorities under the Income-tax Act cannot probe into any issue or such matter relating to such applicants.

16. The position of law being as above with reference to the statutory provisions, the appellants had shown to the authorities and the Tribunal that they are primary agricultural credit societies in terms of clause (cciv) of section 5 of the Banking Regulation Act, having regard to the primary object or principal business of each of the appellants. It is also clear from the materials on record that the bye-laws of each of the appellants do not permit admission of any other co-operative society as member, except may be, in accordance with the proviso to sub-clause (2) of section 5(cciv) of the Banking Regulation Act. The different orders of the Tribunal which are impeached in these appeals do not contain any finding of fact to the effect that the bye-laws of any of the appellant or its classification by the competent authority under the Kerala Co-operative Societies Act is anything different

from what we have stated hereinabove. For this reason, it cannot but be held that the appellants are entitled to exemption from the provisions of section 80P of the Income-tax Act by virtue of sub-section (4) of that section. In this view of the matter, the appeals succeed”.

Hon'ble Jurisdictional High Court had thus remitted these appeals back to the Tribunal for consideration afresh with the following directions.

“ With the aforesaid, we remit all these matters for reconsideration by the Income Tax Appellate Tribunal in the light of the answers rendered herein on substantial questions of law (A), (B) and (C). The Tribunal will thereupon consider the issues relating to the bad and doubtful debts and the claim of the assessee in that regard by treating that in all cases where exemptions are claimed under section 80P and such matters were pending before the assessing authority or before the appellate authority, including in these appeals, the question of exemption available under section 80P was still available for decision”.

3. Now before us, Id. Counsel for the assessee submitted that Id. Assessing Officer himself had acknowledged certificate produced by the assessee which proved it to be a primary agricultural credit society as defined in Section 2(oa) of Kerala Co-operative Societies Act, 1969. Further, according to him, assessee had made the claim u/s.80P of the Act in the regular return of income filed and therefore was eligible for such deduction. In so far as issue of provision of bad debts was concerned, Id. Authorised Representative submitted that he was not pressing the related grounds.

4. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that this

Tribunal had in a number of cases held similar societies engaged in the business of banking as not eligible for deduction claimed u/s.80P(2) of the Act.

5. We have considered the rival contentions and perused the orders of the authorities below. Assessment orders for the impugned assessment years clearly state at paragraph No.5, that the assessee had produced certificate from the competent authority under Kerala Co-operative Societies Act, 1969 which certified that it as a primary agricultural credit society. Their lordship in the case of *Chirakkal Service Co-operative Bank Ltd (supra)*, pertinent part of which has been reproduced in the earlier part of our order, has clearly held that once an assessee was classified as a primary agricultural credit society by the competent authority under Kerala Co-operative Societies Act, it necessarily had to be considered as a society having as its principle object providing agricultural credit activities and providing loan and advances for agricultural purposes. Their lordship had taken this view considering definition of clause in Sec. 2(oa) of Kerala Co-operative Societies Act. Assessee having produced the certificate from competent authority reflecting its nature as a primary agricultural credit society, we are of the opinion that it was eligible for deduction claimed u/s.80P(2) of the Act. Ex-consequenti, we direct the Id. Assessing Officer to grant the deduction claimed by the assessee

under such Section. Grounds 1 & 2 are allowed. Grounds 3 & 4 which are on provision of bad debts, are dismissed as not pressed.

6. In the result, the appeals of the assessee for both the years are treated as partly allowed.

Order pronounced in the open court on 14-03-2017.

Sd/-
(GEORGE GEORGE.K)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(ABRAHAM P. GEORGE)
लेखा सदस्य/ACCOUNTANT MEMBER

Cochin

दिनांक/Dated:14th March, 2017

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

- 1 The Nileshwar Service Co-Operative Bank Ltd, Nileshwar, Kasaragod 671 314.
2. The Income Tax Officer, Ward -2, Kasargod.
3. The Commissioner of Income Tax (Appeals), Kozhikode
4. The Principal Commissioner of Income Tax (Appeals) Kozhikode.
5. D.R. I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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