

IN THE INCOME TAX APPELLATE TRIBUNAL : COCHIN BENCH: KOCHI.

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE GEORGE. K., JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No. 11/Coch/2014.

निर्धारण वर्ष /Assessment year : 2010-2011.

M/s. Mutholy Service Co-
Operative Bank Ltd,
Puliyannor P.O.
Kottayam Dist. 686 573

Vs. The Income Tax Officer,
Ward 4
Kottayam.

[**PAN AAAJM 0328H**]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by : Shri. Jose Kutty Jacob, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. A. Dhanaraj, Sr. D.R

सुनवाई की तारीख/Date of Hearing : 20-03-2017
घोषणा की तारीख /Date of Pronouncement : 23-03-2017

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

This is an appeal remitted back to this Tribunal by Hon'ble Jurisdictional High Court. Originally assessee had claimed deduction u/s.80P (2) (a) (i) of the Act on interest income received by it. This was not allowed for a reason that such interest partook the nature of "income from other sources" and was not business income. When the issue reached this Tribunal, this Tribunal relying on the judgment of Hon'ble Apex Court in the case of *Totgar's Co-operative Society Ltd*

vs. ITO 322 ITR 283 held that interest on fixed deposits held with Sub-Treasury, Meenachili, Kadappattoor and SBI Pala aggregating to Rs.20,21,909/- were out surplus funds of the assessee and could not be treated as business income entitled for deduction u/s. 80P(2)(a) (i) of the Act. Assessee thereupon moved the Hon'ble Jurisdictional High Court. Their lordship in judgment in ITA No.72 of 2016 dated 18th October, 2016 held as under:-

"2. Learned counsel for the appellants submits that the issue relatable to the applicability of Section 80P of the Income Tax Act, 1961 to the appellants is covered by the decision of this Court in Chirakkal Service Co-operative Bank Limited v. Commissioner of Income Tax [2016(2) KLT 535]. He further points out that circular No.18/2015 dated 02.11.2015 is sufficient enough to answer the issues raised in relation to 'income from other sources' and 'profits and gains of business' as covered by questions of law 'B' and 'C'. Having bestowed our anxious consideration to the submissions of the learned counsel for the appellants vis-à-vis the submissions of the learned Senior standing counsel for the Department, who said that all the issues appear to be intricately connected inasmuch as the questions under Section 80P can also be considered only in the light of the question whether interest derived by the society is income from other sources, we are of the view that it is necessary that the Tribunal re-considers all the issues arising for decision in these appeals, in particular, the applicability of circular No.18/2015 dated 02.11.2015 and the question of applicability of the ratio of the decision in Chirakkal Service Co-operative Bank Limited (supra) as to the effect of Section 80P of the Income Tax Act on the appellants. To enable a comprehensive consideration by the Income Tax Appellate Tribunal of all the issues arising for decision in these appeals, in the appeals before the Tribunal, in the light of what we have stated above, the impugned orders of the Tribunal are vacated and the cases are remitted to the Tribunal for re-consideration. Parties are directed to mark appearance

before the Tribunal on 15.11.2016. These income tax appeals are ordered accordingly”.

2. Accordingly, appeal was taken up today. Ld. Counsel for the assessee submitted that by virtue of Circular No. 18/2015 dated 02.11.2015, when assessee was doing a business akin to banking then interest on deposits received could be treated only as part of business income.

3. Per contra, Id. Departmental Representative submitted that assessee for deduction u/s. 80P(2)(a) (i) of the Act assessee claimed itself to be a primary agricultural credit society whereas for the purpose of claiming interest income as part of business receipts, it was projecting itself as a banking company. Further, according to Id. Departmental Representative, by virtue of judgment of Hon'ble Apex Court in the case of *Totgar's Co-operative Society Ltd (supra)* interest income of a non banking company could be considered only under the head "income from other sources".

4. We have considered the rival contentions and perused the orders of the authorities below. Hon'ble Jurisdictional High Court had remitted the appeal back to us with a clear direction to consider circular No.18/2015, dated 02.11.2015 and judgment of their lordship

in the case of *Chirakkal Service Co-operative Bank Ltd. vs. CIT 384 ITR 490*. Circular No.18/2015, dated 02.11.2015 is reproduced hereunder:-

'Subject : Interest from Non-SLR securities of Banks—reg.

It has been brought to the notice of the Board that in the case of Banks, field officers are taking a view that, "expenses relatable to investment in non-SLR securities need to be disallowed under section 57(i) of the Act as interest on non-SLR securities is income from other sources".

2. Clause (id) of sub-section (1) of section 56 of the Act provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from other sources", if, the income is not chargeable to income-tax under the head "Profits and gains of business and profession".

3. The matter has been examined in light of the judicial decisions on this issue. In the case of CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007] 160 Taxman 48 (SC), the apex court held that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and gains of business and profession".

3.2 Even though the abovementioned decision was in the context of co-operative societies/Banks claiming deduction under section 80P(2)(a)(i) of the Act, the principle is equally applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

4. In the light of the Supreme Court's decision in the matter, the issue is well settled. Accordingly, the Board has decided that no appeals may henceforth be filed on this ground by the officers of the Department and appeals already filed, if any, on this ground before Courts/Tribunals may be

withdrawn/not pressed upon. This may be brought to the notice of all concerned”.

It may be true that for application of Sec. 80P(2)(a)(i) of the Act assessee was considered as a primary agricultural credit society based on certificate issued by Joint Registrar, Kottayam. In our opinion para 3.2 of the circular reproduced above has accepted the judgment of Hon'ble Apex Court in the case of *CIT vs. Nawanshahar Central Cooperative Bank Ltd 289 ITR 6*, as correct for cooperative societies /banks claiming deduction u/s. 80P(2)(a)(i) of the Act. In other words, the Board has taken a view that interest earnings of a cooperative society which was having as its primary business, providing credit facilities to its members who were agriculturists, could be considered under the head income from business and not from income from other sources. Similar view was taken by the Co-ordinate Bench in the case of *The Kizhadiyoor Service Cooperative Bank Ltd vs. ITO (in ITA No.525/Coch/2014) dated 20.07.2016*. In the circumstances, we are of the opinion that assessee has to succeed in this appeal. Interest earned by the assessee from its deposits placed in Sub-Treasury and banks are eligible for deduction u/s. 80P(2)(a)(i)

of the Act. Ordered accordingly.

5. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 23-03-2017.

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

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

Cochin

दिनांक/Dated: 23rd March, 2017

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |

By Order

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