

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

**BEFORE S/SHRI SHRI P K BANSAL, VICE PRESIDENT & GEORGE GEORGE K, JM**

**ITA No 143/Coch/2015  
(Asst Year 2010-11)**

M/s Chelannur Service Cooperative Bank Ltd No.F 1242 PO Chelannur Calicut 673 616	Vs	The Income Tax Officer Ward 2(3), Calicut
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>PAN No.</b>	AABAT6195R
Assessee By	Smt K Parvathy Ammal
Revenue By	Sh A Dhanaraj, SR DR
Date of Hearing	25 <sup>th</sup> Sept 2017
Date of pronouncement	26/09/2017

**ORDER**

**PER GEORGE GEORGE K, JM:**

This appeal, at the instance of the assessee, is directed against the CIT(A)'s order dated 20<sup>th</sup> Nov 2014. The relevant assessment year is 2010-11.

2 The issues raised in this appeal are two-fold namely;

- (a) disallowance u/s 80P &
- b) disallowance u/s 40a(ia)

3 Brief facts of the case are as follows:

The assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. For the assessment year 2010-11, the assessment was completed vide order dated 26.3.2013 by rejecting the assessee's

claim of deduction u/s 80P(2) of the I T Act. The primary reason for denying the benefit of deduction u/s 80P by the Assessing Officer was that the assessee had not filed the return u/s 139(1) or 139(4) of the Act and hence, according to the Assessing Officer as per section 80A(5) of the Act, deduction u/s 80P(2) shall not be allowed.

4 Aggrieved by the assessment order, the assessee preferred an appeal to the first appellate authority. The CIT(A) dismissed the appeal of the assessee by following the order of the Tribunal in the case of M/s Kadachira Service Cooperative Bank Ltd vs ITO reported in 153 TTJ 129 (Cochin). The relevant finding of the CIT(A), read as follows:

*" I heard the counsel for the appellant and considered his submissions. The issue raised by the appellant with regard to disallowance of deduction u/s 80P of the Act has been considered by the Hon'ble ITAT Cochin Bench in the case of M/s Kadachira Service Cooperative Bank Ltd vs ITO (2013) 153 TTJ (Cochin) 129 for the assessment year 2009-10 in which it has been held that assessee is not entitled to deduction u/s 80P if return of income has not been filed within the prescribed time. Following the said order, I dismiss this ground of appeal of the appellant in this case also as the factual matrix is same in both the cases."*

5 Aggrieved by the above order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The Id counsel for the assessee Smt Parvathy Ammal, submitted that the issue is squarely covered by the judgment of the Hon'ble Kerala High Court in the case of Chirakkal Service Cooperative Bank Ltd ., reported in 384 ITR 490.

5.1 On the other hand, the Id DR submitted that the assessee has not filed the return as per the provisions of section 139(1) or 139(4) of the Act and hence, would

not be entitled to get the benefit of 80P(2) deduction in light of section 80A(5) of the I T Act.

6 We have heard the rival parties and perused the material on record. The Hon'ble High Court in the case of Chirakkal Service Cooperative Bank Ltd (supra) had held that the Tribunal was not justified in denying the benefit of deduction u/s 80P of the Act on the mere ground of belated filing of return of income. The Hon'ble High Court was considering the following substantial question of law:

*"B Whether the Tribunal is justified in denying the exemption u/s 80P of the I T Act 1961 on the mere ground of belated filing of return by the assessee?"*

*C. Whether a return filed by the assessee beyond the period stipulated u/s 139(1)/(4) or section 142(1)/148 can be held as non-est in law and invalid for the purpose of deciding exemption u/s 80P of the I T act, 1961?"*

6.1 In considering the above substantial question of law, the Hon'ble High Court rendered the following findings:

*"18. Questions B & C relate to denial of exemption on ground referable to belated filing of return, that is to say, returns filed beyond the period stipulated under section 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 sub section 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 1 S 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 of 2006 with effect from 1.4.2006. This clearly evidences the legislative intendiment that the inhibition contained in sub section 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 Hence, question would arise as to whether belated returns filed beyond the period stipulated under section 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 statue and the governing bind precedents, it goes without saying that the claim for exemption will also stand effectuated as a claim duly made as part of the returns so filed, for due consideration.

21 When a notice under section 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 1 s 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 1n modification of the returns already fi1ed could also be entertained, particularly when it relates to claims for exemptions. This is so because the fina1iy 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 under section 80P of the I T act on the mere ground of belated filing of return by the assessee concerned. A return fi1ed by the assessee beyond the period stipulated under section 139(1) or 139(4) or under section 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 that a return filed at any stage of such proceedings could be treated as non-est in law and invalid for the purpose of deciding exemption under section 80p o the IT Act. We thus, answer substantial questions of law Band C formulated and enumerated above."

6.2 The Assessing Officer nor the CIT(A) had the benefit of the judgment of the Hon'ble Jurisdictional High Court in the case of Chirakkal Service Cooperative Bank Ltd (supra) wherein it is categorically held that mere belated filing of return of income will not disentitle the assessee from claiming of benefit of deduction u/s 80P(s) of the Act. Therefore, we are of the view that the Assessing Officer has to consider the dictum laid down by the Hon'ble jurisdictional High Court in the case of Chirakkal Service Cooperative Bank Ltd (supra) and take a decision in accordance with law as expeditiously as possible. We make it clear that if other conditions are satisfied for claiming the benefit u/s 80P(2) of the Act, mere belated filing of return shall not be a ground for denying the said benefit. It is ordered accordingly.

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

Order pronounced in the open Court on 26 / 09/ 2017.

Sd/-	Sd/-
<b>( P K BANSAL )</b>	<b>(GEORGE GEORGE K )</b>
<b>Vice president</b>	<b>Judicial Member</b>

Cochin: Dated 26/09 / 2017

**Raj\***

Copy to:

1. Appellant –
2. Respondent –
3. CIT(A)
4. CIT,
5. DR
6. Guard File

By order

Assistant Registrar  
ITAT, COCHIN