

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

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA Nos.268 & 269/COCH/2015

Assessment Year:2009-10

M/s Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahkarana Sangam, Nileshwar. PAN:AAAAN 8969 J	Vs	Income Tax Officer, Ward-1, Kasargod.
(Appellant)		(Respondent)

Appellant by	Shri Arun Raj S, Advocate
Respondent by	Shri A. Dhanaraj, Sr. D. R.
Date of hearing	26/09/2017
Date of pronouncement	26/09/2017

ORDER

PER P. K. BANSAL, V.P.

In both these appeals filed by the assessee, the issue involved relates to the claim of deduction by the assessee under section 80P(2)(a)(vi) of the Act.

2. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted as per the copy of the decision filed by Learned D. R. that the impugned issue whether the assessee is entitled for deduction under section 80P(2)(a)(vi) of the Act has been decided by the Hon'ble Jurisdictional High Court in the case of the assessee for the assessment year 2008-09 and 2009-10 as reported in 380 ITR 34 against the assessee. We have

gone through the said decision and noted that when the similar issue in the assessment year 2008-09 and 2009-10 travelled to Hon'ble High Court, Hon'ble High Court held as under:

"13. We have also gone through the bye-laws of the society. The factual findings of the Assessing Officer, which was confirmed by the Appellate Tribunal show that though membership of the society is confined to persons who are enrolled as the members of the Toddy Workers Welfare Fund Board and are toddy tapers, for the toddy that are tapped and delivered by them to the society, they are paid remuneration based on the quantity of toddy delivered. On similar terms, toddy is collected from the non-members also. The bye-laws of the society shows that the main object of the society is establishment and management of the toddy shops. The activity of the society is, therefore, purchase of toddy from its members and non- members on payment of the agreed remuneration and its sale through the toddy shops established by the society itself.

14. This, therefore, shows that the collective disposal of the labour of the members of the society is not resulting in the generation of any income to the society. On the other hand, toddy tapped and delivered by the members of the society and non-members are purchased by it and remuneration is paid to them at agreed rates. The toddy thus purchased is sold through the toddy shops established by the society. Therefore, the income of the society has nothing to do with the collective disposal of the labour of its members but is entirely from out of the price realised by it for the sale of toddy through the society's own toddy shops. When that is the activity of the society, it cannot be said that the sum referred to in section 80P(1) entitling the society for deduction is generated out of the collective disposal of the labour of the appellant-societies.

15. The society does not dispute the correctness of the factual finding that toddy is collected from non-members also. Though this was attempted to be explained by the learned counsel by pointing out that there are persons who supplied toddy till they became eligible for admission to the Toddy Workers Welfare Fund Board, the fact that at least

until then, the suppliers of toddy are non-members of the societies, remain undisputed. However, even if this contention of the Revenue is accepted, the societies would not be totally deprived of the benefit of deduction but would have been entitled to proportionate deduction.

16. For the aforesaid reasons, the Tribunal is fully justified in holding that the appellant-societies are not eligible for the benefit of section 80P(2)(a)(vi) of the Act."

3. Respectfully following the said decision of Hon'ble High Court in assessee's own case for assessment year 2008-09 and 2009-10, we do not find any illegality or infirmity in the order of the CIT(A) denying the deduction to the assessee under section 80P(2)(a)(vi) of the Act. We, therefore, confirm the order of CIT(A) dismissing the appeal of the assessee in both the assessment years.

4. In the result, both the appeals of the assessee stand dismissed.

(Order pronounced in the open court on 26/09/2017)

Sd/.
(GEORGE GEORGE K.)
Judicial Member

Sd/.
(P. K. BANSAL)
Vice President

Dated:26/09/2017
***Singh**

Copy of the order forwarded to :

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
5. D.R., I.T.A.T., Cochin

Asstt. Registrar