

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

Before Shri George George K, Judicial Member

ITA No.383/Coch/2017 : Asst.Year 2011-2012

The Income Tax Officer Ward – 2 Kollam.	Vs.	The Mayyanad Regional Co-Operative Bank Ltd. Mayyanad, Kollam-691 303 PAN : AAFM1017Q.
(Appellant)		(Respondent)

Appellant by : Sri. A.Dhanaraj, Sr.DR

Respondent by : Sri. K.Gopi, CA

Date of Hearing : 11.10.2017	Date of Pronouncement : 11.10.2017
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ORDER

This appeal at the instance of the Revenue is directed against the CIT(A)'s order dated 15.06.2017. The relevant assessment year is 2011-2012.

2. The grounds read as follows:-

"1. The Learned Commissioner of Income tax (Appeals), erred in concluding that "the appellant being a Primary Agricultural Credit Cooperative Society registered under the Kerala Cooperative Societies Act is entitled for exemption of its entire income u/s 80P(2) as claimed in the return filed and the interest income earned from the loan given for non-agricultural purpose shall necessarily be treated as business income and accordingly, the appellant society can rightly claim exemption over the interest which was earned from the loan given for non-agricultural purposes."

2. It is respectfully submitted that the respondent is essentially, a Cooperative bank and not merely a primary agricultural credit Society and hence the allowance of deduction u/s 80 P to the respondent assessee while computing the total income was irregular in nature and also against law.

3. The present appeal involves substantial question of law.

(i) The Ld.CIT(A) ought to have seen that the Hon 'ble Supreme Court in the case of Sabarkhanta Zilla Kharid Vchar Sangh Ltd. Vs CIT reported in 203 ITR 1027 (SC) has held that eligible deduction u/s.81(1)(d) (substituted by section 80P by Finance (No. 2)Act, 1967 w.e.f. 01.04.1968) of the Income tax Act, 1961 in respect of co-operative societies/banks doing both agricultural and non agricultural activities should not be 100% of the gross profits and gains of business of such societies etc. but would be limited to the profits generated from agricultural activities alone performed by such assessee."

(ii) The Ld. CIT(A) ought to have seen that the above Apex Court's decision is in sharp contrast to the decision of the Kerala High Court in the case of M/ s Chirakkal Service Co-operative Bank & Ors. In ITA No.212 of 2013, held that the authorities under the Income tax Act cannot probe into question whether the assessee cooperative society is a "primary agricultural credit society", once it is registered and classified as "primary agricultural credit society" by the competent authorities under the provisions of the Kerala Cooperative societies Act, 1969.

(iii) The Ld. CIT(A)ought to have brought his attention to the decision of the Hon'ble High Court in the case of Perinthalmanna service Cooperative Bank Ld reported in (2014) 363 ITR 68 (Kerala) wherein it was held that "with introduction of section 80P(4) necessarily, an enquiry has to be conducted into factual situation whether co-operative bank is conducting business as a primary agricultural and rural development Bank and depending upon

transactions, Assessing officer has to extend benefits available, and he would not merely look at the registration certificate issued under the relevant Co-operative Societies Act or at nomenclature of cooperative bank.

(iv) The appeal involving similar question is pending before the Hon'ble Supreme Court of India in the case of M/ s Karakulam Service Co-operative Bank Ltd (Civil Appeal No.11288 of 2016 dated 25.11.2016) and the Ld. CIT(A) should have awaited decision of Hon'ble decision of Honble Supreme court.

(v) Among others, the following judicial ratios also indicate that carte blanche deductions u/s 80P are not available to the assessee merely on the basis of professed agricultural credits:

(a) Rodier Mill Employees Co-operative Stores Ltd Vs crr 135 ITR 355 (mad)

(b) CIT Vs Kerala State Co-operative Marketing Federation Ltd (1998) 234 ITR 301 (Ker)

(c) Kerala State Co-operative Agricultural Rural Development Bank Ltd Vs 'ACIT (ITA No.506/Coch/2010 & SP No.67/Coch/2010)

4. Further, in the case of the assessee for A Y 2013-14, appeal has been filed before the Income tax Appellate Tribunal, Kochi on the same issue.

5. For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Appeals, Trivandrum on the above points may be set aside and that of the Assessing Officer restored."

3. Briefly stated the facts of the case are as follows:

The assessee is a Co-operative Society, registered under the Kerala Cooperative Societies Act. It is providing credit facilities to its members. For the assessment year 2011-2012, return of income was filed on 30.03.2013 declaring nil income after claiming deduction u/s 80P of the Income-tax Act. Scrutiny assessment was completed vide order dated 26.03.2014 u/s 143(3) of the Act, wherein the Assessing Officer had denied the claim of deduction u/s 80P(2) of the Act on pro rata basis for agricultural and non-agricultural activities.

4. Aggrieved by the order of assessment, limiting the claim of deduction u/s 80P(2), the assessee preferred appeal to the first appellate authority. The CIT(A) following the judgment of the Hon'ble jurisdictional High Court in the case of Kararinakam Service Cooperative Bank Ltd. in ITA No.25 of 2015 dated 15.02.2016, held that being a Primary Agricultural Credit Society, registered under the Kerala Cooperative Societies Act, is entitled to the entire benefit of the exemption claimed u/s 80P(2) of the Act.

5. Revenue being aggrieved, has filed the present appeal before the Tribunal. The learned Departmental Representative relied on the grounds raised in the memorandum of appeal. The learned AR, on the other hand, submitted that the issue in question is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd. reported in 384 ITR 490.

6. I have heard the rival submissions and perused the material on record. The Hon'ble High Court, in the case of Chirakkal Service Co-op Bank Ltd., reported in 384 ITR 490 has held that a primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of deduction u/s 80P(2). The Hon'ble High Court was considering the following substantial question of law:

"a) Whether on the facts and in the circumstances of the case under consideration/ the Tribunal is correct in law in deciding against the assessee/ the issue regarding entitlement for exemption under section 80P, ignoring the fact that the assessee is a primary agricultural credit society?"

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

"15. Appellants in these different appeals are indisputably societies registered under the Kerala cooperative societies Act 1969, for sort, 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. The parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other thing 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 visualize as due reciprocative legislative

exercise by the Parliament recognizing 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 KCS 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 KCS 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 KCS Act. The authorities under the IT 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 BR 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 BR 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 KCS Act is anything different from what we have stated herein above. For this reason, it cannot but be held that the appellants are entitled to exemption from the provisions of section 8OP of the IT Act by virtue of sub-section 4 of that sect; on. In this view of the matter, the appeals succeed.

17. In the light of the aforesaid, we answer substantial question: `A' in favour of the appellants and hold that the Tribunal erred in law in deciding the issue regarding the entitlement of exemption under section BOP against the

appellants. We hold that the primary agricultural credit societies, registered as such under the KCS Act; and classified so, under that Act including the appellants are entitled to such exemption."

6.2 In the instant case, the assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The certificate has been issued by the Registrar of Cooperative Societies to the above said effect and the same is on record. The Hon'ble High Court, in the case cited supra, had held that primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of deduction u/s 80P(2). Since there is a certificate issued by the Registrar of Cooperative Societies, stating that the assessee is a primary agricultural credit society, I hold that the assessee is entitled to the benefit of deduction u/s 80P(2) of the Act. Therefore, I see no reason to interfere with the order of the CIT(A) and I uphold the same. It is ordered accordingly.

7. In the result, this appeal by the Revenue stands dismissed.

Order pronounced on this 11th day of October, 2017.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 11th October, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Trivandrum.
4. CIT(A), Trivandrum
5. DR, ITAT, Cochin
6. Guard file.

True copy

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin