

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

Before Shri Abraham P.George, AM & Shri George George K, JM

ITA No.512/Coch/2016 : Asst.Year 2008-2009

ITA No.27/Coch/2017 : Asst.Year 2010-2011

ITA No.28/Coch/2017 : Asst.Year 2011-2012

The Income Tax Officer Ward 2(2), Range 2 Thiruvananthapuram.	Vs.	M/s.Balaramapuram Service Co-op Bank Ltd. Vizhinjam Road Balaramapuram P.O. Thiruvananthapuram Pin 695 501. PAN : AABAB5082D.
(Appellant)		(Respondent)

CO No.3/Coch/2017 : Asst.Year 2008-2009

CO No.10/Coch/2017 : Asst.Year 2010-2011

CO No.11/Coch/2017 : Asst.Year 2011-2012

M/s.Balaramapuram Service Co-op Bank Ltd. Vizhinjam Road Balaramapuram P.O. Thiruvananthapuram Pin 695 501.	Vs.	The Income Tax Officer Ward 2(2), Range 2 Thiruvananthapuram.
(Cross Objector)		(Respondent)

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

Assessee by : Dr.K.P.Pradeep

Date of Hearing : 15.11.2017	Date of Pronouncement : 16.11..2017
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ORDER

Per Abraham P. George, AM

These appeals at the instance of the Revenue and Cross
Objection at the instance of the assessee are directed against

two orders of the CIT(A) dated 31.10.2016 and 05.12.2016. The relevant assessment years are 2008-2009, 2010-2011 and 2011-2012.

2. Since common issue is raised in these appeals, and they pertain to the same assessee, these appeals and cross objections were heard together and are being disposed off by this consolidated order, for the sake of convenience and brevity. We shall first take up for adjudication the Revenue's appeal.

3. In the Revenue's appeal, identical grounds are raised. The crux of the issue raised in Revenue's appeal is whether the CIT(A) is justified in directing the Assessing Officer to grant deduction u/s 80P(2) of the Income-tax Act, to the assessee-society. The Revenue has also filed additional ground, which reads as follow:-

"1. The learned CIT(Appeals) ought to have seen that the Hon'ble Supreme Court in the case of Sabarkhanta Zila Kharid Vechar Sangh Ltd. V. CIT reported in 203 ITR 1027 (SC) had held that eligible deduction under section 81(1)(d) [substituted by section 80P by the 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 nonagricultural activities should not be 100% of the gross profits and gains of business of such societies etc., but should be limited to the profits generated from agricultural activities alone performed by such assessee.

2. The learned CIT(Appeals) 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 that 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 or the Kerala Cooperative Societies Act,1969.

3. The learned CIT(Appeals) ought to have brought his attention to the decision of the honourable High Court in the case of Perinthalmanna Service Cooperative Bank Ltd, 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 cooperative bank is conducting business as a primary agricultural credit society or primary cooperative 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 co-operative bank.

4. The learned CIT (appeals) ought to have seen that the Apex Court has admitted the SLPs filed by the Department against the decisions of (1) the Honourable Kerala High Court in the case of M/s Karakulam Service Cooperative Bank and (2) the honourable Karnataka High Court in the case of CIT v. Lokmanya Multipurpose Co-operative Society Ltd reported in Part 4 of 394 ITR (St.).

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

4. Briefly stated the facts of the case are as follow:-

4.1 The assessee is a Co-operative Society, registered under the Kerala Co-Operative Society Act, 1969. It is engaged in providing credit facilities to its members. For the assessment years 2008-2009, 2010-2011 and 2011-2012, assessments were completed by denying the benefit of deduction u/s 80P(2) of the Act. The reason for the Assessing Officer to deny the benefit of deduction u/s. 80P(2) of the Act was that the assessee was primarily engaged in the business of banking and in view of the provisions of section 80P(4), the co-operative society doing business of banking is not entitled to the benefit of deduction u/s. 80P(2) of the Act.

4.2 Aggrieved by the action of the Assessing Officer in denying the claim of deduction u/s. 80P(2) for the assessment years 2008-2009, 2010-2011 and 2011-2012, the assessee filed the appeals before the first appellate authority. The CIT(A) allowed the appeals of the assessee. The CIT(A) directed the Assessing Officer to grant deduction u/s. 80P(2) of the Act for the assessment years 2008-2009, 2010-2011 and 2011-2012. The CIT(A), In taking the above view, relied on the judgment of the Hon'ble Kerala High Court in the case of Chirakkal Service Co-operative Bank Limited vs. CIT reported in 284 ITR 490.

4.3 Aggrieved by the order of the CIT(A) in granting the benefit of deduction u/s. 80P(2) of the Act, the Revenue has

filed the present appeals before the Tribunal. The learned Departmental Representative relied on the ground and the additional grounds raised in the memorandum of appeal.

4.4 The AR submitted the issue in question is squarely covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court reported in the case of Chirakkal Co-op Bank Ltd. V. CIT (supra).

5. We have heard the rival submissions and perused the material on record. The Hon'ble jurisdictional High Court in the case of The Chirakkal Service Cooperative Bank Ltd & others (supra) has held that the 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?

5.1 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 co-operative 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 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 the 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 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 80P 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 substantia¹ 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 80P 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."

5.2 In the instant case, admittedly, the assessee has produced a certificate showing that it is registered as a Primary Agricultural Credit Society under the provisions of the Kerala Co-operative Societies Act, 1969. Since the Hon'ble Kerala High Court has categorically held that a Primary Agricultural Credit Society registered under the Kerala Co-operative Societies Act, 1969 is entitled to the benefit of deduction u/s. 80P(2) of the Act, we are of the view that the CIT(A) is justified in directing the Assessing Officer to grant the benefit of deduction u/s. 80P(2) of the Act.

Cross Objection Nos. 03/Coch/2017, 10/Coch/2017 & 11/Coch/2017 (by the assessee)

6. The Cross Objections filed by the assessee are supporting the order of the CIT(A). Since we have dismissed the appeals filed by the Revenue, the Cross Objections filed by the assessee have become infructuous and the same are dismissed.

7. To sum-up, the appeals filed by the Revenue and the Cross Objections filed by the assessee are dismissed.

Order pronounced on this 16th day of November, 2017.

Sd/-
(George George K.)
JUDICIAL MEMBER

Sd/-
(Abraham P.George)
ACCOUNTANT MEMBER

Cochin ; Dated : 16th November, 2017.
Devdas*

Copy of the Order forwarded to :

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

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BY ORDER,

(Asstt. Registrar)
ITAT, Cochin