

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.146/Coch/2018 : Asst.Year 2012-2013
SA No.12/Coch/2018

ITA No.147/Coch/2018 : Asst.Year 2013-2014
SA No.13/Coch/2018

M/s.Mararikulam Service Co-operative Bank Limited, No.1509, Mararikulam PO Cherthala, Alapuzha PAN : AACAM9305P.	Vs.	The Income Tax Officer Ward - 2 Alappuzha.
(Appellant)		(Respondent)

Appellant by : Sri. Arun Raj, Advocate
Respondent by : Sri. A.Dhanaraj, Sr.DR

Date of Hearing : 03.07.2018	Date of Pronouncement : 05.07.2018
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ORDER

Per Bench

These appeals at the instance of the assessee are directed against two orders of the CIT(A), both dated 27.02.2018. The relevant assessment years are 2012-2013 and 2013-2014. The assessee had also filed stay petitions seeking to stay the recovery of outstanding tax arrears.

2. Briefly stated facts of the case are as follows:-

The assessee is a co-operative society. For the assessment years 2012-2013 and 2013-2014, the assessee did not file the returns of income as per the provisions of

section 139 of the I.T.Act. Therefore, the Assessing Officer issued notices u/s 148 of the I.T.Act on 31.03.2015 for both the assessment years, i.e., Asst.Years 2012-2013 and 2013-2014. In response to the notices issued u/s 148, the assessee did not file the returns of income. Therefore, the Assessing Officer completed the assessments u/s 144 r.w.s. 147 by estimating the total income at Rs.10,78,506 and Rs.11,59,950 for assessment years 2012-2013 and 2013-2014, respectively.

3. Aggrieved by the assessment orders completed for assessment years 2012-2013 and 2013-2014, the assessee preferred appeals before the first appellate authority. Before the first appellate authority the assessee's contentions were primarily two folds, viz., (i) whether the Assessing Officer is justified in issuing notices u/s 148 of the I.T.Act, and (ii) the Assessing Officer has erred in denying the benefit of deduction u/s 80P(2) of the I.T.Act to the assessee. The CIT(A) upheld the assessments u/s 147 r.w.s. 144 of the I.T.Act. As regards the claim of deduction u/s 80P(2) of the I.T.Act and the CIT(A) referring to the judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd vs CIT reported in 384 ITR 490 held that since the assessee has not filed the return of income for assessment years 2012-2013 and 2013-2014, no deduction u/s 80P(2) of the I.T.Act can be claimed by the assessee.

4. Aggrieved by the orders of the CIT(A) for assessment years 2012-2013 and 2013-2014, the assessee has preferred

the present appeals before the Tribunal. The learned Counsel for the assessee submitted that when appeals were pending before the Tribunal, the assessee has filed the returns of income for the assessment years 2012-2013 and 2013-2014 and claimed deduction therein u/s 80P(2) of the I.T.Act. Therefore, it was submitted by the learned Counsel for the assessee that going by the dictum laid down by the judgment of the *Chirakkal Service Co-op Bank Ltd vs CIT* (supra) the assessee is entitled to deduction u/s 80P(2) of the I.T.Act irrespective of the fact that the return was filed belatedly.

5. The learned Departmental Representative present supported the orders of the Assessing Officer and the CIT(A).

6. We have heard the rival submissions and perused the material on record. Admittedly in this case, the assessee has not filed the returns of income pursuant to the notices issued u/s 148 of the I.T.Act. Therefore, the assessments were completed u/s 147 r.w.s. 144 of the I.T.Act denying the claim of deduction u/s 80P(2) of the I.T.Act. It is now submitted that the assessee has filed the returns of income for assessment years 2012-2013 and 2013-2014 when the appeals were pending before the Tribunal. The Hon'ble High Court in the case of *Chirakkal Service Co-op Bank Ltd vs CIT* (supra) had held at para 21 that appeals are continuation of assessment proceedings and even if the return of income was filed before the appellate authority claiming deduction u/s 80P(2), the

same has to be acted upon. The Hon'ble High Court was considering the following substantial questions of law:-

“(B) Whether the Tribunal is justified in denying the exemption under section 80P of the Income Tax 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 under section 139(1)/(4) or section 142(1) / 148 can be held as non est in law and invalid for the purpose of deciding exemption under section 80P of the Income Tax Act, 1961?”

6.1 In deciding the above questions, the Hon'ble High Court held as follows:-

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 here 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 is 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 subsection 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. Here, questions 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 statute and the governing binding 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 is 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 in modification of the returns already filed could also be entertained, particularly when it relates to claims for exemptions. This is so because the finality 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 IT Act on the mere ground of

belated filing of return by the assessee concerned. A return filed 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 of the IT Act. We thus answer substantial questions of law Band C formulated and enumerated above."

6.2 In para 21 of the judgment, the Hon'ble High Court has categorically held that return filed beyond the period stipulated u/s 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 I.T.Act. In view of the above conclusions of the Hon'ble High Court, we direct the Assessing Officer to consider the claim of deduction u/s 80P of the I.T.Act as expeditiously as possible. Therefore, the appeals filed by the assessee are allowed for statistical purposes. It is ordered accordingly.

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7. Since the appeals are disposed off, the stay applications are dismissed as infructuous.

8. In the result, the appeals filed by the assessee are allowed for statistical purposes and the stay applications filed by the assessee are dismissed.

Order pronounced on this 05th day of July, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 05th July, 2018.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin