

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

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

ITA No.142/Coch/2018 : Asst.Year 2012-2013

The Income Tax Officer Ward – 3 Kottayam.	Vs.	M/s.The Mannanam Service Co-operative Bank Limited, Gandhinagar Kottayam – 686 561. PAN : AAAAM2525P.
(Appellant)		(Respondent)

CO No.22/Coch/2018 : Asst.Year 2012-2013

M/s.The Mannanam Service Co-operative Bank Limited, Gandhinagar Kottayam – 686 561.	Vs.	The Income Tax Officer Ward – 3 Kottayam.
(Cross Objector)		(Respondent)

Revenue by : Sri. A.Dhanaraj, Sr.DR
Assessee by : Sri.M.K.Kuruvilla

Date of Hearing : 12.07.2018	Date of Pronouncement : 23.07.2018
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue and the cross objection preferred by the assessee, are directed against the order of the CIT(A) dated 31.01.2018. The relevant assessment year is 2012-2013.

2. Two issues are raised in this appeal:

- (i) Whether the assessee is entitled to deduction u/s. 80P(2)(a)(i) of the I.T.Act.

(ii) Whether the interest earned on investment made with sub-treasury and Banks is entitled for deduction u/s. 80P(2)(a)(i) of the I.T. Act.

3. Briefly stated the 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 2012-13, the assessee had filed return of income on 24.05.2013, declaring 'Nil' income after claiming deduction amounting to Rs.23,79,988 u/s. 80P of the I.T. Act. The assessment u/s. 143(3) of the Act was completed vide order dated 23.03.2015 by denying the deduction u/s. 80P(2) of the I.T. Act. The reasoning of the Assessing Officer for denying the claim of deduction u/s. 80P of the Act was that the assessee was primarily engaged in the business of banking and therefore, in view of the provisions of section 80P(4) of the I.T. Act which was inserted with effect from 01.04.2007, the assessee was not entitled to deduction u/s. 80P(2) of the Act. Further, the Assessing Officer assessed the interest income received by the assessee on investment made with sub-treasury and banks under the head 'income from other sources'.

4. Aggrieved by the order of the assessment, the assessee preferred appeal before the first appellate authority. The CIT(A), following the judgment of the Jurisdictional High Court in the case of *Chirakkal Service Co-operative Bank Ltd.* (384 ITR 490) held that the assessee is entitled to deduction

u/s. 80P(2) of the I.T. Act and directed the Assessing Officer to allow deduction u/s. 80P of the Act. As regards the interest income received on investment with sub-treasury and Banks, the CIT(A), following the order of the Tribunal in the case of Kizhathadiyoor Service Co-operative Bank Limited in ITA No.525/Coch/2014 for AY 2009-10 (order dated 20/07/2016), held that the interest income earned by the assessee from other banks and treasury is eligible for deduction u/s.80P(2)(a)(i) of the I.T.Act and directed the Assessing Officer to allow the same.

5. Aggrieved by the order of the Ld. CIT(A), the Revenue has filed the present appeal before us. The Ld. DR relied on the grounds raised. The Ld. AR on the other hand submitted that the issue in question is squarely covered in favour of the assessee by the judgment of the Hon'ble High Court of Kerala in the case of *Chirakkal Service Co-op Bank Ltd. reported in 384 ITR 490.*

6. We have heard the rival submissions and perused the material on record. Admittedly, the assessee is a primary agricultural credit society registered under the Kerala Cooperative Societies Act, 1969. The Hon'ble High Court of Kerala in the case of *Chirakkal Service Co-op Bank Ltd. (supra)* had 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 co-operative societies Act 1969, for short 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 Ad

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 section. 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 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."

6.2 In view of the judgment of the Hon'ble Jurisdictional High Court in the case of *Chirakkal Service Co-op Bank Ltd.*

(supra), we hold that the assessee-Society is entitled to the benefit of deduction u/s. 80P(2) of the Act. It is ordered accordingly.

7. As regards the issue whether the assessee was entitled to deduction u/s 80P(2)(a)(i) of the I.T. Act for the interest received on investment made with sub-treasuries and banks, the Ld. AR relied on the following orders of the Tribunal wherein the issue was decided in favour of the assessee:-

- (i) Padne Service Co-operative Bank Limited v. ITO (ITA No.584/Coch/2017 - order dated 11.01.2018)
- (ii) Kizhathadiyoor Service Cooperative Bank (ITA No.525/Coch/2014 - order dated 20.07.2016)
- (iii) Mundakkayam Service Co-operative Bank Ltd. vs. ITO (ITA No.106/Coch/2018 - order dated 31.10.2016).

7.1 The Tribunal in the above mentioned cases have held that interest earned from investment with sub-treasuries and Banks was part of the banking activities, and therefore, the said income was entitled to deduction u/s 80P(2)(a)(i) of the I.T. Act. Hence, following the co-ordinate Bench orders of the Tribunal in the above mentioned cases, we hold that the CIT(A) is justified in directing the A.O. to grant deduction u/s 80P(2)(a)(i) of the I.T. Act for the interest earned on the investments made with sub-treasuries and Banks. It is ordered accordingly.

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8. The Cross Objection at the instance of the assessee is only supporting the order of the CIT(A). Since we have already dismissed the Revenue's appeal, the C.O. filed by the assessee has become infructuous and the same is dismissed as infructuous.

9. In the result, the Revenue's appeal and assessee's Cross Objection are dismissed.

Order pronounced on this 23rd day of July, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 23rd July, 2018.
Devdas*

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin