

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No.145/Coch/2018
Assessment Year : 2012-13

The Income Tax Officer, Ward-4, Alappuzha	Vs.	M/s. Uzhava Service Co-operative Bank Ltd., A305, Uzhava, Pattanakkadu, Cherthala, Alappuzha-688 531 [PAN : AAAAU 3965B]
(Revenue-Appellant)		(Assessee -Respondent)

Revenue by	Shri A. Dhanaraj, Sr. DR
Assessee by	Smt. Veena G., CA

Date of Hearing	12/07/2018
Date of pronouncement	23/07/2018

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the Revenue is directed against the order of the CIT(A), Kottayam dated 31/01/2018. The relevant assessment year is assessment year 2012-13.

2. The solitary issue raised in this appeal is whether the CIT(A) was justified in directing the Assessing Officer to grant deduction u/s. 80P(2)(a)(i) of the I.T. Act to the assessee-Society.

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 18/09/2012, declaring income of Rs.1,06,130/- after claiming deduction amounting to Rs.53,20,309/- u/s. 80P of the I.T. Act. The assessment u/s. 143(3) of the Act was completed vide order dated 16/03/2016 by denying deduction u/s. 80P(2) of the I.T. Act. The reasoning of the Assessing Officer to disallow the claim of deduction u/s. 80P of the Act was that the assessee was primarily engaged in the business of banking and by virtue of insertion of sub-section (4) to section 80P of the I.T. Act with effect from 1/4/2007, the assessee was not entitled to deduction u/s. 80P(2) of the Act.

4. Aggrieved by the denial of the benefit of deduction u/s. 80P(2) of the Act, 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 Society (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.

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 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."

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. In the result, the appeal filed by the Revenue is dismissed.

Pronounced in the open court on 23rd July, 2018

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 23rd July, 2018

GJ

Copy to:

1. M/s. Uzhava Service Co-operative Bank Ltd., A305, Uzhava, Pattanakkadu, Cherthala, Alappuzha-688 531.
2. The Income Tax Officer, Ward-4, Alappuzha.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin

